

DOCUMENT 17

18

OPERATION AND MAINTENANCE AGREEMENT

THIS OPERATION AND MAINTENANCE AGREEMENT (the "O&M Agreement"), dated as of _____, 2006, and made in duplicate originals is entered into by and between the Lubeck Public Service District (the "Water District") and E. I. du Pont de Nemours and Company, a Delaware corporation ("DuPont"). The Water District and DuPont are sometimes hereinafter collectively referred to as the "Parties."

RECITALS:

- A. To resolve claims arising out of a class action lawsuit in the Circuit Court of Wood County, West Virginia, an action captioned *Jack W. Leach, et al. v. E. I. du Pont de Nemours and Company and Lubeck Public Service District*, Case No. 01-C-608, DuPont has entered into a Settlement Agreement with the class members in that suit.
- B. The Settlement Agreement, a copy of which is attached to this O&M Agreement as Exhibit A (the "Settlement Agreement"), sets forth DuPont's agreement to, among other things, "offer to design or procure and install state-of-the-art water treatment technology or its functional equivalent at [DuPont's] sole cost and expense for each of the Public Water Districts to reduce the levels of C-8 in the affected water supply to the lowest practical levels as specified by the individual Public Water Districts (the 'Water Treatment Project' or 'Project')." Ex. A, § 11.1. DuPont engineers have determined that the state-of-the-art water treatment technology for this purpose is a Granular Activated Carbon ("GAC") Treatment System ("Treatment System").
- C. By the terms of the Settlement Agreement, DuPont has also agreed to reimburse the Public Water Districts for any operating and maintenance costs directly and exclusively attributable to the Water Treatment Project until DuPont is no longer obligated to do so by the Settlement Agreement. Ex. A, § 11.2
- D. The Water District is one of the Public Water Districts referenced in the Settlement Agreement, but is not a party to the Settlement Agreement.
- E. In accordance with the Settlement Agreement, DuPont has developed a plan for the Water Treatment Project in consultation with the Water District. This development plan details the overall plan for the design, development, construction and operation and includes:
 - a. Design Plans for the Project designed to comply with applicable regulatory requirements attached hereto at Exhibit B;
 - b. an Engineering Report, attached hereto as Exhibit C, containing:
 - i. description of the type of improvements to be constructed and the equipment to be installed as part of the Project;

- ii. a list of permits required by regulatory authorities; and
- iii. a monitoring plan that provides a schedule for sampling and analysis to determine the carbon change-out schedule;
- c. a projected schedule for construction and installation of the required improvements attached hereto as Exhibit D; and
- d. a proposed budget for the construction and development of the Project and a proposed annual operation and maintenance budget for the Project attached hereto as Exhibit E.
- e. a lease agreement between the Water District and DuPont regarding the land upon which the facility hereinafter described will be situate, attached hereto as Exhibit F.

NOW, THEREFORE, in consideration of the above premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. DuPont, or its authorized agents or contractors, shall at its sole cost and expense:
 - a. design and install all necessary equipment to provide the Treatment System to the Water District water supply consistent with the Design Plans set forth in Exhibit B; and
 - b. design and construct a protective building to house the Treatment System consistent with the Design Plans set forth in Exhibit B.
2. DuPont, or its authorized agents or contractors, shall, at its sole cost and expense, operate the Project during the Operating Period (as defined in Section 6 hereof). It is understood that during various phases of the Project, DuPont or its authorized agents or contractors will prepare or obtain various documents relevant to the proposed improvements. These documents shall be provided to LPSD in accordance with the following:
 - A. *Permitting Phase Documents.* All applications for permits and applicable document submitted to State or Federal agencies are subject to the approval of the Water District. Furthermore, any revisions to the documents resulting from review(s) by State or Federal agencies shall be subject to approval by the Water District. Upon obtaining all permits, but prior to commencing construction, two sets of the final construction contract documents (contract forms, general conditions, supplementary conditions, and technical specifications) shall be provided to the Water District.
 - B. *Construction Phase Documents.* Prior to their incorporation into the construction, DuPont shall provide the Water District with two copies of shop drawings and submittals for items that are to be incorporated into the construction work. The Water District shall have five (5) business days from the date it receives these

documents to provide its comments before the items are incorporated into the construction work. DuPont shall provide a draft of operation and maintenance (O&M) manuals and warranty documents when they become available. DuPont shall provide final O&M manuals and warranty documents within thirty (30) days after the start-up of Project.

- C. *Post Construction Phase Documents.* Within 60 days after final completion of the Project, Dupont will provide the Water District with two sets of "revised as constructed" drawings (one set of mylars and one paper set of copied sheets), and electronic files of the drawings suitable for use with AutoCADD software and placed on a compact disc.

3. During the Operating Period (as defined in Section 6 hereof), DuPont shall own the facility and equipment referred to in numbered paragraph 1 hereinabove, and shall lease the land upon which the equipment and facility will be located from the Water District pursuant to a Lease Agreement in the form attached hereto as Exhibit F.

4. During the Operating Period (as defined in Section 6 hereof), DuPont shall pay the costs for operation and maintenance of the Project (collectively, the "O&M Costs") as set forth in Exhibit E.

5. Within fifteen (15) calendar days following the execution of this Agreement by DuPont, DuPont shall cause to be created an escrow account at United Bank, Inc. in Parkersburg, West Virginia, in which DuPont shall deposit the initial sum of Ten Thousand Dollars (\$10,000.00). During the Operating Period (as defined in Section 6 hereof), as the Water District incurs any O&M Costs directly and exclusively attributable to the Project, the Water District may withdraw an amount or amounts equal to those costs in order to satisfy those costs. At the time of the withdrawal, the Water District will provide written notice to DuPont explaining the amount of the withdrawal, its purpose, and attaching any invoices for costs. DuPont will monitor the account and replenish it when the balance reaches \$5000.00. The account will have three signatories, one from the Water District, one from DuPont, and one from Spilman, Thomas and Battle, PLLC. Lubeck shall have sole authority to withdraw funds for the purposes outlined herein during the Operating Period. Upon termination of the Operating Period, any funds remaining in said account shall be refunded to DuPont and that account may be closed.

6. The period during which DuPont is obligated to operate the Project and pay the O&M Costs shall be tied to the findings of the independent Science Panel established by the Settlement Agreement, such period to be determined in accordance with Sections 6a-f hereof, (the period as so determined, the "Operating Period"):

- a. DuPont shall operate the Project and pay the O&M Costs at least until the date upon which the Science Panel delivers its first Findings (the Association/No Association Finding(s)) called for by the Settlement Agreement.
- b. If the Science Panel delivers an Association Finding, DuPont's obligation to operate the Project and pay the O&M Costs shall continue at least until the date upon which the Science Panel delivers a Probable Link Finding. If, instead, the

Science Panel delivers a No Association Finding, DuPont's obligation to operate the Project and pay the O&M Costs shall cease pursuant to Section 6(e) hereof except to the extent DuPont is obligated to continue to provide for the Project pursuant to Sections 6(d).

- c. If the Science Panel delivers a Probable Link Finding, DuPont's obligation to operate the Project and pay the O&M Costs shall continue unless and until this Agreement is terminated by the Water District. If, instead, the Science Panel delivers a No Probable Link Finding DuPont's obligation to operate the Project and pay the O&M Costs shall cease pursuant to Section 6(e) hereof except to the extent DuPont is obligated to continue to provide for the Project pursuant to Sections 6(d).
- d. Notwithstanding the findings of the Science Panel, DuPont's obligation to operate the Project and pay the O&M Costs shall continue to the extent necessary to meet applicable state or federal regulations governing C-8 concentrations in the Water District's public drinking water supply.
- e. In the event the Science Panel delivers a No Association Finding or a No Probable Link Finding, the Water District shall inform DuPont, in writing, within ten (10) days of its receipt of the Science Panel's Finding as to whether the Water District will pursue West Virginia Public Service Commission ("WVPSC") (or any other regulatory agency) approval for the Water District to assume the obligation to operate and maintain the Project. If the Water District does not so inform DuPont within ten (10) days, DuPont's obligation to operate and maintain the Project shall cease as of the eleventh (11th) day. If the Water District timely informs DuPont of the Water District's decision to continue to operate the Project and seek WVPSC (or any other regulatory agency) approval, DuPont shall be responsible for O&M Costs for the Project for the lesser of the following:
 - i. one (1) year; OR
 - ii. the time period necessary for the Water District to obtain approval from the WVPSC (or any other regulatory agency) for the Water District to assume the obligation to operate and maintain the Project.
- f. In the event that the Water District terminates this agreement pursuant to Section 13 hereof, DuPont's obligation to operate the Project and pay the O&M costs shall cease as of the effective date of the termination.

7. During the Operating Period, DuPont shall operate the Water Treatment Project according to the conditions set forth in Exhibit C.

8. During the Operating Period, DuPont shall administer or cause to be performed the following procedures in operating the Water Treatment Project:

- a. Monitoring of the Water District water supply in accordance with the procedure set forth in Exhibit C;
 - b. Filter backwash management. A backwashing process for the GAC filters will be performed at initial set-up and after each bed change-out in a manner consistent with Exhibit C, and shall also be performed in accordance with the recommendations of the manufacturer of the GAC filters, such as, for the sake of example, and not by limitation, following a change in pressure.
 - c. Establishment of compliance breakthrough concentration with the [agency] prior to operating the Project. The compliance breakthrough concentration will be set at a level that will ensure that any PFOA exiting the lead bed will be removed by the polishing bed.
 - d. Carbon bed change-outs. Upon measuring compliance breakthrough concentrations in the effluent from the lead carbon bed, DuPont shall change out the carbon in the lead bed in a manner consistent with Exhibit C. DuPont shall ensure that a qualified technical representative from DuPont's selected agent or contractor is present during each carbon change-out to be sure all equipment is operating correctly
 - e. DuPont shall be responsible for disposal of spent carbon from the Project.
9. Upon the expiration of the Operating Period, the lease agreement which is attached hereto as Exhibit F shall automatically terminate, and DuPont shall, at its sole cost and expense, at the Water District's request:
- a. remove all Project equipment and take reasonable measures to return the Water District's property to its original condition prior to installation of the Project equipment, OR
 - b. convey to the Water District all Project equipment, in its as-is, where-is condition. The responsibility for operating, maintaining and paying for the Project shall shift to the Water District at the time of conveyance, OR
 - c. remove all Project equipment except the building and underground piping and conduits and generator, and return the flooring of the building and associated facility to a fully useable state.
10. During the Operating Period, DuPont shall comply with all applicable federal, state and local regulations (including, but not limited to court orders and any requirements of the Water District) in constructing, operating and maintaining the Project.
11. DuPont shall, at its sole cost and expense, take the following actions and/or seek the following regulatory permits for the Project:
- a. In accordance with Section 16-1-9 of the West Virginia Code and Section 64-3-4 of the Code of State Regulations, DuPont will have submitted to the West

Virginia Bureau for Public Health, Department of Health and Human Resources ("BPH") detailed plans for the Project including a Water Data Supply Sheet, a review fee, Detail Plans, appropriate endorsements of the owner, professional engineer, and plan preparer, and a submittal letter. Approval of DuPont's submissions by the BPH shall be required before construction of the Project begins.

- b. In accordance with Section 47-10-9 of the Code of State Regulations, DuPont sought a modification to the Water District's existing NPDES permit to allow discharge of backwash water from the Project to existing swales at the Water District.
- c. DuPont or its building contractor will obtain all necessary building permits for the Project from the County of the Water District before construction of the Project.
- d. DuPont shall submit to any electrical inspections for the Project by the Water District.

12. DuPont understands that the Water District must file with the Public Service Commission of West Virginia (the "PSC"), in accordance with Section 16-13A-25 of the West Virginia Code, an application for a certificate of convenience and necessity for approval of the Water Treatment Project and approval of the O&M Agreement. DuPont shall pay the Water District's reasonable costs and expenses (i.e., those agency fees charged by the Public Service Commission) of obtaining said approvals from the PSC. The PSC approvals shall be required before construction of the Project begins. DuPont shall also bear any reasonable regulatory costs associated with the removal of the Project equipment pursuant to Section 9a or 9c hereof. The regulatory costs and expenses described in this Section do not require pre-approval by DuPont as set forth in Section 14.

13. The Water District may terminate this O&M Agreement at any time by not less than thirty (30) days' prior written notice to DuPont. If the Water District terminates this O&M Agreement as aforesaid, the Operating Period shall be deemed to expire as of the effective date of termination.

14. DuPont shall pay necessary legal or accounting fees incurred by the Water District and associated with regulatory approvals required with respect to the Project during the Operating Period. DuPont shall not be obligated to pay any fees it determines are either excessive or unrelated to the Project. The Water District shall provide written estimates to DuPont of legal and accounting fees before such fees are incurred. In turn, DuPont shall inform the Water District within five (5) business days whether DuPont agrees to pay those estimated costs. DuPont shall not be responsible to compensate the Water District for legal or accounting fees incurred by the Water District without this pre-approval, unless, due to exigent circumstances, the Water District is unable to provide written estimates thereof.

15. DuPont shall pay for any reasonable costs for oversight work relating to design, construction and installation of the Project by engineers employed by the Water District, up to and including an amount of \$10,000.00 for services rendered after the effective date of this

Agreement. DuPont will discuss with the Water District reimbursement for any future necessary costs that may exceed \$10,000.00.

16. This O&M Agreement and its Exhibits constitute the entire agreement between the Parties relating to the subject matter hereof, and supercede all prior negotiations and understandings, whether oral or written, except to the extent that any settlement agreements and/or orders of court have been entered and/or reached as between the parties hereto.

17. No modification or amendment of this O&M Agreement will be effective unless and until set forth in writing and signed by the Parties. No changes to the attached Exhibits will alter DuPont's core obligation to install, operate and maintain the Project, as described elsewhere in this O&M Agreement.

18. This O&M Agreement shall be construed and enforced under and governed by the laws of the State of West Virginia, without regard to, or application of, its conflict of law rules.

19. Each party to this O&M Agreement represents to the other party to the O&M Agreement that such party's execution, delivery and performance of this O&M Agreement has been duly authorized by all appropriate action, the individual executing and delivering this O&M Agreement on its behalf has been duly and properly empowered to do so, and this O&M Agreement does not violate any covenant, term, provision, instrument, indenture, contract or other agreement to which it is a party or by which it is bound.

20. This O&M Agreement may be executed in two counterparts, each of which shall be deemed to constitute an original, but all of which shall constitute one and the same instrument, and shall become effective when one or more counterparts have been signed by each of the parties hereto.

21. If any term, provision, covenant or restriction of this O&M Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this O&M Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

22. Nothing in this O&M Agreement constitutes an admission or statement by DuPont or the Water District that DuPont or any of its subsidiaries or the Water District has acted unlawfully or wrongfully or is otherwise liable in any respect in connection with the presence of C-8 in the Water District's drinking water supply.

23. All notices provided for hereunder (including a notice of change of address) will be in writing, will be addressed in accordance with the information set forth on the signature page hereto and will be deemed given (a) in the case of delivery by hand, when delivered by hand, (b) in the case of delivery by a standard overnight carrier, upon the date of delivery indicated in the records of such carrier, (c) in the case of a facsimile transmission, when received by recipient in legible form (with machine confirmation), or (d) in the case of delivery by certified mail with return receipt requested, three days after being deposited in the United States mail.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the day and year first above written.

E. I. DU PONT DE NEMOURS AND
COMPANY, a Delaware corporation

By: _____

Name:

Date:

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2006.

Notary Public

My commission expires _____.

LUBECK PUBLIC SERVICE DISTRICT

By: _____
Name: _____
Date: _____

STATE OF WEST VIRGINIA
COUNTY OF WOOD

The foregoing instrument was acknowledged before me this _____ day of _____, 2006.

Notary Public

My commission expires _____.

